

## Message Text

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42

ACTION EUR-25

INFO OCT-01 ISO-00 HEW-08 CIAE-00 DODE-00 PM-07 H-03

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P R 081650Z JUL 74

FM USMISSION BERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC 3621

C O N F I D E N T I A L BERLIN 1136

E.O. 11652: GDS

TAGS: PGOV WB GW

SUBJECT: SENAT AND ALLIES IN LABOR ON ABORTION LAW

1. LIBERALIZED ABORTION LAW PASSED BY BUNDESTAG LAST MONTH CAUSES NO SUBSTANTIVE DIFFICULTIES IN PROTESTANT-SPD BERLIN, BUT FEDERAL CONSTITUTIONAL COURT'S TEMPORARY INJUNCTION PREVENTING ENTRANCE INTO EFFECT OF MAJOR ELEMENT (ABORTION ON DEMAND IN FIRST THREE MONTHS) HAS CREATED TECHNICAL DIFFICULTIES WITH MANTELGESETZ TAKEOVER PROCEDURES. SENAT AND KOMMANDATURA ARE AGREED THAT NO DIRECT COGNIZANCE CAN BE TAKEN OF KARLSRUHE DECISION LEST CONTITUTIONAL COURT APPEAR TO BE EXERCIZING DIRECT JURISDICTION OVER BERLIN. ON OTHER HAND, SENAT DOES NOT WANT BERLIN ABORTION LAW TO BE DIFFERENT FROM THAT IN FRG. SINCE KARLSRUHE HAS STAYED ACTION ON ONLY PART OF NEW LAW WHILE LETTING REMAINDER COME INTO FORCE AND IS UNLIKELY TO GIVE DECISION ON CONTROVERSIAL ARTICLE 1 UNTIL SOME TIME IN FALL, SENAT CONSIDERS IT MUST ADOPT LAW AND FIND PRACTICAL SOLUTION TO DILEMMA OF HOW TO GIVE INDIRECT EFFECT TO KARLSRUHE STAYING ORDER.

2. SENAT'S INITIAL SUGGESTION WAS THAT CLAUSE BE ADDED ONTO MANTELGESETZ THAT WOULD PROVIDE THAT PROVISIONS OF ARTICLE 1 WOULD TAKE EFFECT IN BERLIN "AS SOON AS AND TO THE EXTENT THAT THEY BECOME EFFECTIVE IN THE REMAINDER OF THE AREA OF  
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APPLICABILITY OF THE LAW." MISSIONS CONSIDERED THAT SUCH

CLAUSE WOULD MAKE TOO DIRECT A LINKAGE WITH KARLSRUHE DECISION BY PERMITTING THAT DECISION TO TAKE EFFECT IN BERLIN WITHOUT EVEN SHADOW OF INTERVENING ACT BY BERLIN AUTHORITY. ALLIES ALSO FELT IT WOULD BE UNDESIRABLE FOR THEM TO TAKE FORMAL COGNIZANCE OF AND GIVE EFFECT TO KARLSRUHE DECISION BY THEMSELVES ISSUING BK/O DEPRIVING ARTICLE 1 OF EFFECT AFTER HOUSE OF REPRESENTATIVES ADOPTED ENTIRE LAW. SENAT HAS NOW PROPOSED THAT FINAL CLAUSE OF MANTELGESETZ PROVIDE THAT PROVISIONS OF ARTICLE 1 WILL TAKE EFFECT IN BERLIN "AS SOON AS AND TO THE EXTENT THAT THEY BECOME EFFECTIVE IN THE REMAINDER OF THE AREA OF APPLICABILITY OF THE LAW AND NOTICE OF THIS IS GIVEN IN THE GESETZUNDVERORDNUNGSBLATT OF BERLIN." WE AND BRITISH MISSION BELIEVE THIS IS AN ACCEPTABLE COMPROMISE WHICH INDICATES THAT THE PURPOSE OF THE RATHER UNUSUAL MANTELGESETZ FORMULATION IS TO PRESERVE LEGAL UNITY BETWEEN BERLIN AND FRG WHILE NOT TAKING FORMAL COGNIZANCE OF KARLSRUHE ACTION AND REQUIRING A FURTHER BERLIN EXECUTIVE ACT (AUTHORIZATION BY SENATOR FOR JUSTICE TO PUBLISH ARTICLE 1 IN SAME FORM AS IT EVENTUALLY IS MADE EFFECTIVE IN FRG) BEFORE CONTROVERSIAL ARTICLE AND ANY COURT-ORDERED MODIFICATION CAN HAVE FORCE IN CITY. FRENCH HAVE NOT YET GIVEN US THEIR VIEWS. BRITISH MISSION IS MAKING QUICK CONFIRMATORY CHECK WITH EMBASSY. SENAT HAS ASKED FOR DEFINITIVE ALLIED POSITION

BY JULY 11 SO IT WILL BE IN POSITION TO HAVE HOUSE TAKE ACTION ON LAW AT FINAL SESSION BEFORE SUMMER RECESS, JULY 13.  
KLEIN

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## Message Attributes

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